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SECOND SUBSTITUTE SENATE BILL 6626

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State of Washington                      60th Legislature                      2008 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kilmer, Kastama, Rasmussen, Regala, Franklin, Marr, Carrell, and Shin)

READ FIRST TIME 02/28/08.

1            AN ACT Relating to creating a sales and use tax deferral program  
2 for eligible investment projects in community empowerment zones;  
3 amending RCW 82.63.030; reenacting and amending RCW 82.32.590 and  
4 82.32.600; adding a new chapter to Title 82 RCW; and providing an  
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9            (1) "Applicant" means a person applying for a tax deferral under  
10 this chapter.

11            (2) "Corporate headquarters" means a facility or facilities where  
12 corporate staff employees are physically employed, and where the  
13 majority of the company's management services are handled either on a  
14 regional or a national basis. Company management services may include:  
15 Accounts receivable and payable, accounting, data processing,  
16 distribution management, employee benefit plan, financial and  
17 securities accounting, information technology, insurance, legal,  
18 merchandising, payroll, personnel, purchasing procurement, planning,  
19 reporting and compliance, research and development, tax, treasury, or

1 other headquarters-related services. "Corporate headquarters" does not  
2 include a facility or facilities used for manufacturing, wholesaling,  
3 or warehousing.

4 (3) "Department" means the department of revenue.

5 (4) "Eligible area" means a designated community empowerment zone  
6 approved under RCW 43.31C.020.

7 (5)(a) "Eligible investment project" means an investment project in  
8 a qualified building or buildings in an eligible area, as defined in  
9 subsection (4) of this section, which will have employment at the  
10 qualified building or buildings of at least three hundred employees in  
11 qualified employment positions, each of whom must earn for the year  
12 reported at least the average annual wage for the state for that year  
13 as determined by the employment security department.

14 (b) The lessor or owner of a qualified building or buildings is not  
15 eligible for a deferral unless:

16 (i) The underlying ownership of the building or buildings vests  
17 exclusively in the same person; or

18 (ii)(A) The lessor by written contract agrees to pass the economic  
19 benefit of the deferral to the lessee;

20 (B) The lessee that receives the economic benefit of the deferral  
21 agrees in writing with the department to complete the annual survey  
22 required under section 2 of this act; and

23 (C) The economic benefit of the deferral passed to the lessee is no  
24 less than the amount of tax deferred by the lessor and is evidenced by  
25 written documentation of any type of payment, credit, or other  
26 financial arrangement between the lessor or owner of the qualified  
27 building and the lessee.

28 (6) "Investment project" means a capital investment of at least  
29 thirty million dollars in a qualified building or buildings including  
30 tangible personal property and fixtures that will be incorporated as an  
31 ingredient or component of such buildings during the course of their  
32 construction, and including labor and services rendered in the  
33 planning, installation, and construction of the project.

34 (7) "Manufacture" has the same meaning as provided in RCW  
35 82.04.120.

36 (8) "Person" has the same meaning as provided in RCW 82.04.030.

37 (9) "Qualified building or buildings" means construction of a new  
38 structure or structures or expansion of an existing structure or

1 structures to be used for corporate headquarters. If a building is  
2 used partly for corporate headquarters and partly for other purposes,  
3 the applicable tax deferral is determined by apportionment of the costs  
4 of construction under rules adopted by the department.

5 (10) "Qualified employment position" means a permanent full-time  
6 employee employed in the eligible investment project during the entire  
7 tax year. The term "entire tax year" means a full-time position that  
8 is filled for a period of twelve consecutive months. The term "full-  
9 time" means at least thirty-five hours a week, four hundred fifty-five  
10 hours a quarter, or one thousand eight hundred twenty hours a year.

11 (11) "Recipient" means a person receiving a tax deferral under this  
12 chapter.

13 (12) "Warehouse" means a building or structure, or any part  
14 thereof, in which goods, wares, or merchandise are received for storage  
15 for compensation.

16 (13) "Wholesale sale" has the same meaning as provided in RCW  
17 82.04.060.

18 NEW SECTION. **Sec. 2.** (1) Application for deferral of taxes under  
19 this chapter can be made at any time prior to completion of  
20 construction of a qualified building or buildings, but tax liability  
21 incurred prior to the department's receipt of an application may not be  
22 deferred. The application must be made to the department in a form and  
23 manner prescribed by the department. The application must contain  
24 information regarding the location of the investment project, the  
25 applicant's average employment in the state for the prior year,  
26 estimated or actual new employment related to the project, estimated or  
27 actual wages of employees related to the project, estimated or actual  
28 costs, time schedules for completion and operation, and other  
29 information required by the department. The department must rule on  
30 the application within sixty days.

31 (2)(a) The legislature finds that accountability and effectiveness  
32 are important aspects of setting tax policy. In order to make policy  
33 choices regarding the best use of limited state resources the  
34 legislature needs information on how a tax incentive is used.

35 (b) Applicants for deferral of taxes under this chapter must agree  
36 to complete an annual survey. If the economic benefits of the deferral  
37 are passed to a lessee as provided in section 1(5) of this act, the

1 lessee must agree to complete the annual survey and the applicant is  
2 not required to complete the annual survey. The survey is due by March  
3 31st of the year following the calendar year in which the investment  
4 project is certified by the department as having been operationally  
5 complete and the seven succeeding calendar years. The survey must  
6 include the amount of tax deferred. The survey must also include the  
7 following information for employment positions in Washington:

8 (i) The number of total employment positions;

9 (ii) Full-time, part-time, and temporary employment positions as a  
10 percent of total employment;

11 (iii) The number of employment positions according to the following  
12 wage bands: Less than thirty thousand dollars; thirty thousand dollars  
13 or greater, but less than sixty thousand dollars; and sixty thousand  
14 dollars or greater. A wage band containing fewer than three  
15 individuals may be combined with another wage band; and

16 (iv) The number of employment positions that have employer-provided  
17 medical, dental, and retirement benefits, by each of the wage bands.

18 (c) The department may request additional information necessary to  
19 measure the results of the deferral program, to be submitted at the  
20 same time as the survey.

21 (d) All information collected under this subsection, except the  
22 amount of the tax deferral taken, is deemed taxpayer information under  
23 RCW 82.32.330 and is not disclosable. Information on the amount of tax  
24 deferral taken is not subject to the confidentiality provisions of RCW  
25 82.32.330 and may be disclosed to the public upon request.

26 (3) The department must use the information to study the tax  
27 deferral program authorized under this chapter. The department must  
28 report to the legislature by December 1, 2014, and December 1, 2018.  
29 The reports must measure the effect of the program on job creation, the  
30 number of jobs created for Washington residents, company growth, the  
31 introduction of new products, the diversification of the state's  
32 economy, growth in research and development investment, the movement of  
33 firms or the consolidation of firms' operations into the state, and  
34 such other factors as the department selects. If fewer than three  
35 deferrals are granted under this chapter, the department may not report  
36 statistical information.

37 (4) Applications for deferral of taxes under this section may not  
38 be made after December 31, 2020.

1        NEW SECTION.    **Sec. 3.**    (1) The department must issue a sales and  
2 use tax deferral certificate for state and local sales and use taxes  
3 due under chapters 82.08, 82.12, and 82.14 RCW on each eligible  
4 investment project meeting the requirements of this chapter.

5        (2) No certificate may be issued for an investment project that has  
6 already received a deferral under chapter 82.60 or 82.63 RCW or this  
7 chapter, except that an investment project for qualified research and  
8 development that has already received a deferral may also receive an  
9 additional deferral certificate for adapting the investment project for  
10 use in pilot scale manufacturing.

11        (3) The department must keep a running total of all deferrals  
12 granted under this chapter during each fiscal biennium.

13        (4) The number of eligible investment projects for which the  
14 benefits of this chapter will be allowed is limited to two per  
15 biennium. The department must approve deferral certificates for  
16 completed applications on a first in-time basis. During any biennium,  
17 only one deferral certificate may be issued per community empowerment  
18 zone.

19        **Sec. 4.**    RCW 82.63.030 and 2004 c 2 s 5 are each amended to read as  
20 follows:

21        (1) Except as provided in subsection (2) of this section, the  
22 department shall issue a sales and use tax deferral certificate for  
23 state and local sales and use taxes due under chapters 82.08, 82.12,  
24 and 82.14 RCW on each eligible investment project.

25        (2) No certificate may be issued for an investment project that has  
26 already received a deferral under chapter 82.60 (~~(or 82.61)~~) RCW or  
27 this chapter, except that an investment project for qualified research  
28 and development that has already received a deferral may also receive  
29 an additional deferral certificate for adapting the investment project  
30 for use in pilot scale manufacturing.

31        (3) This section shall expire January 1, 2015.

32        NEW SECTION.    **Sec. 5.**    (1) Except as provided in subsection (2) of  
33 this section, taxes deferred under this chapter need not be repaid.

34        (2)(a) If, on the basis of the survey under section 2 of this act  
35 or other information, the department finds that an investment project  
36 is no longer an "eligible investment project" under section 1 of this

1 act at any time during the calendar year in which the investment  
2 project is certified by the department as having been operationally  
3 completed, or at any time during any of the seven succeeding calendar  
4 years, a portion of deferred taxes are immediately due according to the  
5 following schedule:

6	Year in which use occurs	% of deferred taxes due
7	1	100%
8	2	87.5%
9	3	75%
10	4	62.5%
11	5	50%
12	6	37.5%
13	7	25%
14	8	12.5%

15 (b) If a recipient of the deferral fails to complete the annual  
16 survey required under section 2 of this act by the date due, twelve and  
17 one-half percent of the deferred tax is immediately due. If the  
18 economic benefits of the deferral are passed to a lessee as provided in  
19 section 1(5) of this act, the lessee is responsible for payment to the  
20 extent the lessee has received the economic benefit.

21 (c) If an investment project is meeting the requirement of section  
22 1(5) of this act at any time during the calendar year in which the  
23 investment project is certified as having been operationally complete  
24 and the recipient of the deferral fails to complete the annual survey  
25 due under section 2 of this act, the portion of deferred taxes  
26 immediately due is the amount on the schedule in (a) of this  
27 subsection. If the economic benefits of the deferral are passed to a  
28 lessee as provided in section 1(5) of this act, the lessee is  
29 responsible for payment to the extent the lessee has received the  
30 economic benefit.

31 (3) The department must assess interest at the rate provided for  
32 delinquent taxes, but not penalties, retroactively to the date of  
33 deferral. The debt for deferred taxes will not be extinguished by  
34 insolvency or other failure of the recipient. Transfer of ownership

1 does not terminate the deferral. The deferral is transferred, subject  
2 to the successor meeting the eligibility requirements of this chapter,  
3 for the remaining periods of the deferral.

4 NEW SECTION. **Sec. 6.** The qualified employment positions must be  
5 filled by the end of the calendar year following the year in which the  
6 project is certified as operationally complete. If a recipient does  
7 not meet the requirements for qualified employment positions by the end  
8 of the second calendar year following the year in which the project is  
9 certified as operationally complete, all deferred taxes are immediately  
10 due.

11 **Sec. 7.** RCW 82.32.590 and 2006 c 354 s 17, 2006 c 300 s 10, 2006  
12 c 177 s 8, 2006 c 112 s 7, and 2006 c 84 s 7 are each reenacted and  
13 amended to read as follows:

14 (1) If the department finds that the failure of a taxpayer to file  
15 an annual survey or annual report under RCW 82.04.4452, 82.32.5351,  
16 82.32.650, 82.32.635, 82.32.640, 82.32.630, 82.32.610, section 2 of  
17 this act, or 82.74.040 by the due date was the result of circumstances  
18 beyond the control of the taxpayer, the department shall extend the  
19 time for filing the survey or report. Such extension shall be for a  
20 period of thirty days from the date the department issues its written  
21 notification to the taxpayer that it qualifies for an extension under  
22 this section. The department may grant additional extensions as it  
23 deems proper.

24 (2) In making a determination whether the failure of a taxpayer to  
25 file an annual survey or annual report by the due date was the result  
26 of circumstances beyond the control of the taxpayer, the department  
27 shall be guided by rules adopted by the department for the waiver or  
28 cancellation of penalties when the underpayment or untimely payment of  
29 any tax was due to circumstances beyond the control of the taxpayer.

30 **Sec. 8.** RCW 82.32.600 and 2007 c 54 s 23 and 2007 c 54 s 22 are  
31 each reenacted and amended to read as follows:

32 (1) Persons required to file annual surveys or annual reports under  
33 RCW 82.04.4452 or 82.32.5351, 82.32.610, 82.32.630, 82.32.635,  
34 82.32.640, section 2 of this act, or 82.74.040 must electronically file  
35 with the department all surveys, reports, returns, and any other forms

1 or information the department requires in an electronic format as  
2 provided or approved by the department. As used in this section,  
3 "returns" has the same meaning as "return" in RCW 82.32.050.

4 (2) Any survey, report, return, or any other form or information  
5 required to be filed in an electronic format under subsection (1) of  
6 this section is not filed until received by the department in an  
7 electronic format.

8 (3) The department may waive the electronic filing requirement in  
9 subsection (1) of this section for good cause shown.

10 NEW SECTION. **Sec. 9.** Sections 1 through 3, 5, and 6 of this act  
11 constitute a new chapter in Title 82 RCW.

12 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2009.

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